

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

19-CR-00145-LJV

ZACHARY ROGERS,

Defendant.

MOTION TO ADJOURN SENTENCING

PLEASE TAKE NOTICE that upon the attached Affidavit, the United States of America, by Trini E. Ross, United States Attorney for the Western District of New York, and Russell T. Ippolito, Jr., Assistant United States Attorney, of counsel, hereby moves this Court for an adjournment of the above-referenced defendant's sentencing, which is scheduled on December 6, 2021, for a period of two weeks.

DATED: Buffalo, New York, November 30, 2021.

TRINI E. ROSS
United States Attorney

BY: s/RUSSELL T. IPPOLITO, JR.
Assistant United States Attorney
United States Attorney's Office
Western District of New York
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AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

RUSSELL T. IPPOLITO, JR., being duly sworn, deposes and states:

1. I am an Assistant United States Attorney for the Western District of New York assigned to the prosecution of the above-referenced case. This affidavit is submitted in support of a motion to adjourn the sentencing date for defendant, ZACHARY ROGERS. I have contacted Jesse C. Pyle, Esq., attorney for defendant, ZACHARY ROGERS, and he objects to this request.

2. On December 8, 2020, the defendant pleaded guilty to Count Three of the Indictment, which charged a violation of Title 18, United States Code, Section 2252A(a)(5)(B) [possession of child pornography involving a prepubescent minor or minor who had not attained 12 years of age].

3. The defendant is currently scheduled to be sentenced on December 6, 2021. In order to provide the Court with information that would better enable the Court to obtain an

understanding of the 18 U.S.C. § 3553 factors as they apply to the defendant, the government respectfully requests that sentencing in this action be adjourned for two weeks. The government will use the time to address representations made by the defendant in his sentencing memorandum. Specifically, the government needs time to investigate whether evidence exists to support or refute representations made by the defendant concerning events that occurred in the country of Montenegro and to respond to the defendant's sentencing memorandum.

4. I have been working with Goran Krnaich, Trial Attorney, United States Department of Justice, Criminal Division, Office of International Affairs. Mr. Krnaich has been working with the United States Department of State, Office of the Legal Adviser, to secure a declaration from the Consular Chief of the Consular Section at the United States Embassy located in Podgorica, Montenegro. I have learned that the consular section of the United States embassy in Montenegro conducted regular consular visits with the defendant while he was in custody in Montenegro.

5. The consular declaration will either confirm the defendant's claims made in his sentencing memorandum concerning physical abuse or sow doubt on such claims. The government maintains that the Court deserves to have a full and complete picture of the allegations before imposing sentence.

6. I have expressed some urgency to Mr. Krnaich with respect to the production of this declaration and he has conveyed as much to the Department of State. Mr. Krnaich believes that I could have the declaration this week. However, out of an abundance of caution, and to

allow Mr. Pyle time to review the declaration and to reply to the government's response, if necessary, I am requesting a two-week adjournment.

7. In addition, the government would like additional time to respond to the defendant's 48-page sentencing memorandum. Dkt. 50. The government did not respond previously because efforts were underway to first investigate the allegations of physical abuse in Montenegro. The defendant maintains that he was abused by fellow inmates as soon as they discovered the nature of the charges against the defendant. *Id.* He claims that the abuse culminated with his hospitalization and the removal of his spleen. *Id.* Such allegations are central to his sentencing memorandum. However, the defendant makes other claims to which the government would like to respond as well.

8. Based on the foregoing, it is respectfully requested that sentencing of defendant ZACHARY ROGERS, currently scheduled for December 6, 2021, be adjourned for two weeks.

DATED: Buffalo, New York, November 30, 2021.

s/RUSSELL T. IPPOLITO, JR.
Assistant United States Attorney
United States Attorney's Office
Western District of New York
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Buffalo, New York 14202
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Subscribed and sworn to before me
this 30th day of November 2021.

s/ELLEN KOTSI
Notary Public State of New York
Commission No. 01KO6360733
Qualified in Erie County
My Commission Expire 06/26/p2025